



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

October 23, 2019

BY ECF

The Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Bernard Ebbers*, 02 Cr. 1144 (VEC)

Dear Judge Caproni:

The Government writes in further response to the motion of Bernard Ebbers, the defendant in the above-captioned case, for a sentence reduction pursuant to 18 U.S.C. § 3582, as amended by the First Step Act. As noted by Ebbers in his reply, after the filing of the Government's opposition to his motion, Ebbers, who is incarcerated at the Federal Medical Center in Fort Worth, Texas ("FMC Fort Worth"), was transferred from a housing unit without nursing care to a housing unit with 24-hour nursing care. In response to Ebbers' reply, the Government requested and received additional information from the Bureau of Prisons (the "BOP") concerning Ebbers' health, which is summarized below. For the reasons detailed in the Government's opposition, despite Ebbers' health status, which appears to be in flux, the Government respectfully submits that FMC Fort Worth is appropriately managing Ebbers' health conditions and that the 3553(a) factors weigh strongly against Ebbers' early release.

The Government has learned the following about Ebbers' current health status:

- On October 9, 2019, following reports that Ebbers had been disoriented, Dr. Sergio Mercado, Jr., the Medical Officer at FMC Fort Worth, evaluated Ebbers and determined that he should be placed in "a smaller unit where nursing can help keep him in a stable environment." See Clinical Encounter, attached hereto as Exhibit A.¹
- Dr. Mercado also noted other health concerns related to Ebbers' weight loss and anemia, and reported that a colonoscopy is pending. See *id.*; see also Clinical Encounter Administrative Note, attached hereto as Exhibit B (noting that the request for a colonoscopy is "urgent").

¹ Given the highly personal medical information contained in these records, the Government has filed all exhibits to this letter under seal. The Government last received information from the BOP regarding Ebbers' health on October 22, 2019.

- The Government recognizes the change in Ebbers' health condition since the Government filed its opposition, including that Ebbers' medical conditions now require that he be housed in a unit with 24-hour nursing care. The Government respectfully submits, however, that the Court should deny Ebbers' motion for compassionate release. As an initial matter, the BOP's ability to provide appropriate care for Ebbers is evidenced by the BOP's placement of Ebbers in a unit with around the clock care, follow-up psychological evaluations, and other medical testing. Moreover, as detailed in the Government's opposition, even assuming that Ebbers meets one of the categories of relief described in United States Sentencing Guidelines Section 1B1.13, a sentencing reduction for Ebbers – who was responsible for one of the largest frauds in history – would be grossly insufficient to comply with the sentencing goals set forth in Section 3553(a).

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